

# PATRICK HOLMES

BARRISTER

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## Principal areas of practice

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Commercial, contracts, corporations law, equity and trusts, financial services law, insurance, professional negligence, property, trade practices.

## Admissions and qualifications

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### Entitled to practise as a barrister in all Australian jurisdictions

<b>Admitted as a barrister (New South Wales Bar)</b>	2011
<b>Admitted as a legal practitioner</b> , Supreme Court of NSW and High Court of Australia	2000
<b>Bachelor of Laws; Bachelor of Arts (major: history)</b> , University of New South Wales	1998

## Previous experience

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<b>Solicitor at Allens Arthur Robinson</b> (now <b>Allens</b> ), Sydney, in the positions of:	2000 – 2011
• Senior Associate, Commercial Litigation & Dispute Resolution Group	2004 – 2011
• Lawyer, Commercial Litigation & Dispute Resolution Group	2001 – 2004
• Lawyer, Corporate & Commercial Group	2000 – 2001

## Recent and selected matters as a barrister (counsel)

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Matter	Briefed by; acting for; briefed with (if applicable)	Issues
<b>In the Federal Court of Australia</b>		
<i>Dillon v RBS Group (Australia) Pty Ltd &amp; Ors (Navra class action)</i> (ongoing)	Briefed by King & Wood Mallesons For respondents With P Brereton SC, D Thomas	Alleged breaches of statutory warranties, negligence, misleading conduct and unconscionable conduct in relation to issue of instalment warrants
<i>ASIC v Vocation Ltd (In Liq) &amp; Ors</i> (ongoing)	Briefed by Allens For second defendant With D Study SC, S Lawrance	Alleged breaches of continuous disclosure obligations, breaches of directors' duties, misleading conduct
<i>ASIC v Whitebox Trading Pty Ltd &amp; Anor</i> (ongoing)	Briefed by ASIC For ASIC With J Halley SC, I Ahmed	Alleged market manipulation while index arbitrage trading and breach of directors' duties; contravention of <i>Corporations Act 2001</i> ss 180, 1041A, 1041B; civil penalties.

<i>The Product Makers (Australia) Pty Ltd v Holista Colltech Limited</i> (ongoing)	<i>Briefed by</i> HWL Ebsworth <i>For</i> respondent <i>Unled</i>	Alleged misleading or deceptive conduct through ASX announcements and loss to trade competitor
<i>Casaclang &amp; Ors v WealthSure Pty Ltd</i> [2015] FCA 761; (2015) 238 FCR 55 – 7 day hearing	<i>Briefed by</i> Clyde & Co LLP <i>For</i> WealthSure Pty Ltd <i>With</i> M White SC	Financial services; breach of various Ch 7 <i>Corporations Act 2001</i> provisions; breach of statutory duty; professional negligence
<i>Asahi Holdings (Australia) Pty Ltd &amp; Anor v Pacific Equity Partners Pty Ltd &amp; Ors</i> – settled 1 <sup>st</sup> day of hearing	<i>Briefed by</i> Allens <i>For</i> Unitas respondents <i>With</i> P Jopling QC, M O’Bryan QC, M Borsky	Alleged misleading and deceptive conduct; breaches of warranty; subrogation; included appearing on successful application to join applicants’ warranty insurers. Settled part heard
<i>Archer Capital 4A Pty Ltd atf Archer Capital Trust 4A &amp; Ors v The Sage Group plc</i>	<i>Briefed by</i> Allens <i>For</i> Archer Capital 4A Pty Ltd	Breach of contract; briefed to advise and assist in relation to discovery dispute and preparation of certain witnesses
<i>Top Stuff 4 Business Holdings Pty Ltd v Vodafone Pty Ltd</i>	<i>Briefed by</i> Allens <i>For</i> Vodafone Pty Ltd <i>With</i> N Kidd SC	Breach of contract; misleading and deceptive conduct
<i>Oxygen Mobile Pty Ltd v Vodafone Pty Ltd; Besyl Pty Ltd v Vodafone Pty Ltd</i>	<i>Briefed by</i> Allens <i>For</i> Vodafone Pty Ltd <i>With</i> N Kidd SC	Misleading and deceptive conduct
<b>In the Supreme Court of NSW (including NSW Court of Appeal)</b>		
<i>Australian Style Holdings Pty Ltd v Brookfield Multiplex Capital Management Ltd</i>	<i>Briefed by</i> King & Wood Mallesons <i>For</i> first defendant <i>With</i> J Williams	Alleged breaches of duty under <i>Corporations Act 2001</i> s 601FC, fiduciary duties and equitable duties of trustee
<i>Donau Pty Ltd v ASC AWD Shipbuilder Pty Ltd</i> (ongoing)	<i>Briefed by</i> McCabes <i>For</i> plaintiff <i>With</i> R McHugh SC, D Thomas	Alleged breach of contract, unconscionable conduct, quantum meruit in relation to a subcontract for the construction of warships.
<i>Schlaepfner &amp; Ors v ASIC &amp; Anor</i> (ongoing)	<i>Briefed by</i> Ashurst <i>For</i> ASIC <i>With</i> J Hmelnitsky SC, M Lewis	Alleged defamation
<i>Hastie Group Ltd (In Liq) &amp; Ors v Bourne &amp; Ors</i> [2017] NSWSC 709	<i>Briefed by</i> Clyde & Co LLP <i>For</i> 10 <sup>th</sup> defendant <i>Unled</i>	Alleged breaches of statutory directors’ duties and duties of care, skill and diligence; included successful strike-out application and partial dismissal application. Settled.
<i>RJ Turnbull v IR &amp; RJ Turnbull</i> (ongoing)	<i>Briefed by</i> Cole & Butler <i>For</i> defendants <i>With</i> T Alexis SC	Alleged constructive trust over farm properties arising from representations; claims for equitable compensation

<i>RJ and AP Turnbull v RJ and GW Turnbull</i> [2017] NSWSC 1316 – 3 day hearing	<i>Briefed by</i> Cole & Butler <i>For</i> defendants <i>With</i> T Alexis SC	Successful defence of claim of proprietary estoppel and constructive trust for easement or irrevocable licence
<i>Gold &amp; Copper Resources Pty Ltd v Newcrest Mining Ltd &amp; Ors</i>	<i>Briefed by</i> Allens <i>For</i> defendants <i>Unled</i>	Application to set aside a statutory demand. Settled.
<i>McGrath v Digital4ge Pty Ltd &amp; Ors; Visual Amplifiers Pty Ltd v Alchemy Venture Capital &amp; Ors</i>	<i>Briefed by</i> Murcia Pestell Hillard <i>For</i> third party applicant <i>Unled</i>	Contested application for access to court file
<i>O’Ryan &amp; Anor v Golding &amp; Anor</i>	<i>Briefed by</i> first and second defendants <i>Unled</i>	Alleged oppression in relation corporate proprietor of company title building, trespass, negligence. Settled after mediation.
<i>Idameneo (No 123) Pty Ltd v Bassi</i>	<i>Briefed by</i> King & Wood Malesons <i>For</i> the plaintiff	Breach and unlawful termination of contract. Settled.
<i>Pogorzelska v Bechara</i> [2015] NSWSC 92 and 93	<i>Briefed by</i> Westpac Banking Corporation (second defendant) <i>Unled</i>	Successful defence of plaintiff’s application to prevent bank from paying under garnishee order made by District Court; costs.
<i>In the matter of Nexus Energy Limited (subject to DOCA)</i> [2014] NSWSC 1914; [2014] NSWSC 1910; [2014] NSWSC 1689	<i>Briefed by</i> Clayton Utz <i>For</i> Administrators of Nexus Energy <i>With</i> E Collins SC, then J Simpkins SC, then K Andronos SC	Successful application by company’s administrators under Corporations Act s444GA for leave (opposed by shareholder group) to transfer all company’s shares to secured creditor pursuant to a DOCA.
<i>Robinson v WealthSure Pty Ltd</i>	<i>Briefed by</i> Clyde & Co LLP <i>For</i> WealthSure Pty Ltd <i>Unled</i>	Financial services licensee’s statutory liability for authorised representative’s conduct; professional negligence; misleading and deceptive conduct; statutory warranty re fitness of services. Settled.
<i>Faltas v Faltas</i>	<i>Briefed by</i> Grant Spedding <i>For</i> the plaintiff	Application for possession of residential premises.
<i>La Jolla Cove Investors, Inc v GoConnect Ltd</i> [2014] NSWSC 988	<i>Briefed by</i> Allens <i>For</i> the plaintiff <i>Unled</i>	Successful application to register foreign (US District Court) judgment in NSW Supreme Court
<i>Morgan Stanley Private Equity Asia III Holdings (Cayman) Ltd v XYZ Learning Centres Ltd (Recrs &amp; Mgrs apptd) (In Liq)</i>	<i>Briefed by</i> Watson Mangioni <i>For</i> the defendant <i>With</i> A Payne SC and R Foreman	Misleading and deceptive conduct; breach of contract. Settled part heard.

<i>Hyde Park Management Ltd v Bonnefin</i>	<i>Briefed by King &amp; Wood Mallesons For the plaintiff</i>	Breach and termination of commercial lease; guarantee and indemnity by lessees.
<i>Montague Avoca Pty Ltd v WealthSure Pty Ltd &amp; Anor</i>	<i>Briefed by Clyde &amp; Co LLP For WealthSure Pty Ltd</i>	Professional negligence; acted and appeared at interlocutory hearings.
<i>Trilogy Funds Management Ltd as RE for Pacific First Mortgage Fund v KPMG</i>	<i>Briefed by Clifford Chance For KPMG</i>	Costs assessment appeal; advised and appeared at interlocutory hearings.
<i>YHY Pty Ltd v Vodafone Hutchison Australia Pty Ltd</i>	<i>Briefed by Truman Hoyle For Vodafone Pty Ltd With R Foreman</i>	Unlawful termination of contract; Franchising Code of Conduct.
<i>Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd</i>	<i>Briefed by Allens For the plaintiff</i>	Shareholder's dispute with claims for breach of contract/company constitution, rectification, estoppel, shareholder oppression; briefed to advise and appeared unled at interlocutory hearings.
<i>Global Herbs Pty Ltd &amp; Ors v Vassallo</i>	<i>Briefed by Allens For the plaintiffs With J Lockhart SC</i>	Misleading and deceptive conduct; breach of trust; unconscionable receipt of money; professional negligence; briefed to advise, amend pleadings and appear on various interlocutory issues and at mediation.
<i>Public Transport Ticketing Corporation v Integrated Transit Solutions Ltd</i> (Supreme Court and Court of Appeal)	<i>Briefed by Allens For the plaintiff (PTTC) With P Durack SC and S Free</i>	Breach/repudiation of contract, estoppel, good faith, complex damages issues, public interest immunity; briefed for several months to advise, prepare and appear at trial and in relation to an interlocutory appeal.
<b>In the Supreme Court of Western Australia</b>		
<i>Apache Finance Pty Ltd &amp; Ors v Quadrant Energy Pty Ltd &amp; Anor</i> (ongoing)	<i>Briefed by Clyde &amp; Co LLP For plaintiffs With A Bannon SC</i>	Breaches of share purchase agreement relating to sale and purchase of a natural gas mining, processing and marketing company.
<b>In the Family Court of Australia</b>		
<i>Joseph v Segelov, Ernst &amp; Young &amp; Anor</i>	<i>Briefed by King &amp; Wood Mallesons For Ernst &amp; Young</i>	Defending application for financial orders sought by wife against firm of which husband is a partner. Briefed on interlocutory hearings.

### In the Federal Circuit Court of Australia

<i>Dyason &amp; Anor v Egan &amp; Ors</i>	<i>Briefed by Colin Biggers &amp; Paisley</i> <i>For first and second defendants</i>	Briefed on application for summary dismissal of certain claims and security for costs. Settled after judgment reserved.
<i>Cole v Quest Software Pty Ltd</i> [2013] FCCA 1160	<i>Briefed by Allens</i> <i>For Quest Software Pty Ltd</i>	Application to set aside subpoena issued to defendant by plaintiff

### In the District Court of NSW

<i>Idameneo (No 123) Pty Ltd v Huang</i>	<i>Briefed by King &amp; Wood Mallesons</i> <i>For the plaintiff</i>	Breach and/or repudiation of contract
<i>Optus Networks Pty Ltd &amp; Anor v Programmed Maintenance Services Ltd</i> (ongoing)	<i>Briefed by Corrs Chambers Westgarth</i> <i>For the defendant</i>	Breach and/or repudiation of network services contract
<i>Sukkar v Westpac Banking Corporation</i>	<i>Briefed by Kemp Strang</i> <i>For Westpac Banking Corporation</i>	Breach of contract; unconscionable conduct; negligence; electronic banking.
<i>Carter v Monezt Developments Pty Ltd</i> – District Court of NSW	<i>Briefed by Toltz &amp; Associates</i> <i>For the defendant</i>	Breach of contract; briefed for defendant to advise, settle pleadings and appear unled at final hearing; appeared unled at interlocutory hearings, including contested motions.

### In the NSW Civil & Administrative Tribunal (NCAT) – Appeal Panel

<i>Ford Motor Company of Australia Limited v Gojanovic</i> – settled during 1 day hearing	<i>Briefed by Ford directly</i> <i>Unled</i>	Alleged breaches of Australian Consumer Law consumer guarantees; appeal on questions of law. Settled at hearing.
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### Expert determinations

<i>Commonwealth of Australia (Department of Defence)</i>	<i>Briefed by DLA Piper For the Commonwealth With E Collins SC</i>	Series of references for expert determination concerning disputes with the contractor relating to various major military procurement and maintenance contracts.
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### ASIC investigations

Advice and preparation of claim against a bank (ongoing)	<i>Briefed by ASIC For ASIC With E Collins SC</i>	Alleged contraventions of financial adviser best interest obligations under Pt 7.7A of <i>Corporations Act 2001</i> .
Advice in relation to potential claims against a financial services licensee and its authorised representative (ongoing)	<i>Briefed by ASIC For ASIC With K Stern SC</i>	Alleged contraventions of conflicted remuneration provisions of Pt 7.7A of <i>Corporations Act 2001</i> .
ASIC Act s 19 examinations of various officers of a listed company	<i>Briefed by Allens For examinees</i>	Appearing for various officers at examinations relating to suspected breaches of continuous disclosure obligations.
ASIC Act s 912E(1) notice	<i>Briefed by Allens With B Walker SC For notice recipient</i>	Advising on validity of s 912E notice; drafting application for judicial review relating to notice

### Briefs to advise

Briefed to advise on various matters such as complex damages issues, contractual and statutory defences to misleading conduct claims, termination of contract, joinder of plaintiff's insurers to proceedings, application for Franchising Code of Conduct to particular contracts, applications for statutory easements under *Conveyancing Act 1919* and *Encroachment of Buildings Act 1922* and rights and obligations under residential site agreement under *Residential Parks Act 1998*.

### Selected matters as a solicitor (2001 – 2011)

***Public Transport Ticketing Corporation (PTTC) v Integrated Transit Solutions Ltd***, 2008-2011 (NSW Supreme Court; NSW Court of Appeal) – acted for PTTC in major commercial litigation against contractor re contract for construction of electronic ticketing system for public transport in NSW, including interlocutory disputes before Court of Appeal.

***Hamod v State of NSW & UBS Australia Limited***, 2001-2011 (Federal Court, NSW Supreme Court, NSW Court of Appeal) – acted for UBS in successful defence of intentional tort proceedings and defence of appeal spanning 10 years.

***Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd***, 2010-2011 (NSW Supreme Court) – acted for plaintiff in proceedings re breach of contract/company constitution, rectification, estoppel, shareholder oppression.

***Wells Fargo Bank Northwest NA atf Export-Import Bank of the United States v Victoria Aircraft Leasing Ltd and Republic of Nauru*** (Victoria Supreme Court) – acted for plaintiff in successful injunction and repossession proceedings relating to a commercial Boeing passenger jet.

***Roach v Page (t/as Freehill Hollingdale & Page); Winnote Pty Ltd v Page***, 2001-2007 (NSW Supreme Court; NSW Court of Appeal; High Court) – acted for major Australian law firm in successful defence of professional negligence action and appeal proceedings spanning 7 years.

***Peterson v Tricom Equities Limited*** (NSW Supreme Court) – acted for plaintiff in action against his stockbroker and CHESSE sponsor seeking orders for transfer of securities. Matter settled.

***V8 Supercars Australia Pty Ltd*** – various commercial disputes.

***Various regulatory investigations/proceedings*** – acted for examinees and respondents for requests for assistance and information in relation to examination notices issued by the Australian Securities and Investments Commission, and for a stockbroking firm in disciplinary proceedings conducted by Australian Securities Exchange